

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201504475	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2015 8:15 PM	Location of Incident: Deppe Place and Willow Road West	Precinct: 121	18 Mo. SOL 11/30/2016	EO SOL 11/30/2016	
Date/Time CV Reported Sat, 05/30/2015 9:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/02/2015 3:35 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Clyde Moyer	4072	946038	NARCBSI
2. DT3 Mathew Reich	00122	933211	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Paul Farella	02557	926935	NARCBSI
2. DT3 Stacy Meigs	03273	931824	NARCBSI
3. DT3 Philip Vaccarino	4885	943905	NARCBSI
4. DT3 Michael Fahmy	01434	936561	NARCBSI
5. DT3 Donald Maid	4084	943510	121 DET
6. DT2 Gregory Siciliano	01565	928874	121 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Mathew Reich	Force: Det Mathew Reich used physical force against § 87(2)(b)	
B.DT3 Clyde Moyer	Force: Det Clyde Moyer used physical force against § 87(2)(b)	
C.DT3 Clyde Moyer	Force: Det Clyde Moyer used pepper spray against § 87(2)(b)	

Case Summary

On May 30, 2015, § 87(2)(b) who witnessed the following incident, filed the following complaint via the CCRB call processing system on behalf of § 87(2)(b) who also witnessed a portion of the incident, and § 87(2)(b). On June 4, 2015, Captain Norman Miller of Staten Island Narcotics filed a duplicate complaint with IAB on behalf of § 87(2)(b) who complained of injuries while in police custody (board review 1). The case generated original log number 15-14921, and was received at the CCRB on June 11, 2015.

On May 30, 2015, at approximately 8:15 p.m., Det Clyde Moyer and Det Mathew Reich of Staten Island Narcotics pulled over § 87(2)(b) and § 87(2)(b) on Deppe Place in Staten Island, after Det Reich observed a narcotics transaction between § 87(2)(b) and § 87(2)(b). After a bag of illegally purchased Oxycodone was removed from § 87(2)(b)'s pocket, he attempted to flee. He was brought to the ground by officers, at which point Det Reich and Det Moyer allegedly punched, kneed, and kicked § 87(2)(b) (**Allegation A and B**). While placing § 87(2)(b) under arrest, Det Moyer pepper sprayed § 87(2)(b) (**Allegation C**). Both § 87(2)(b) and § 87(2)(b) were arrested for criminal possession of a controlled substance in the third degree, and § 87(2)(b) was transported to § 87(2)(b) for treatment for the pepper spray and facial abrasions (board review 3; 4). § 87(2)(b) who does not personally know § 87(2)(b) or § 87(2)(b) provided video footage she had recorded of a portion of the event. The footage does not depict any of the alleged force (board review 2).

§ 87(2)(b), § 87(2)(g)

Mediation, Civil and Criminal Histories

- Mediation was presented to § 87(2)(b) on June 11, 2015. She rejected mediation (board review 20).
- As of August 13, 2015, § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York with regard to this incident (board review 5).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (board review 8).
- This is the first CCRB complaint involving § 87(2)(b) (board review 9).
- Det Reich has been a member of the NYPD for twelve years. He has one other open CCRB complaint, case 201506807, § 87(2)(g). Det Reich has had 23 previous CCRB cases involving 70 allegations, six of which were substantiated. One of these substantiated allegations, in case 201409178, was an allegation of

force. He has had eleven other allegations of force pleaded against him, one of which was exonerated, two of which were truncated, and eight of which were unsubstantiated.

- Det Moyer has been a member of the NYPD for seven years and has had four previous CCRB cases involving ten allegations, none of which were substantiated. One of these past allegations was an allegation of force, and was unsubstantiated.

Potential Issues

§ 87(2)(b) did not have § 87(2)(b)'s phone number. Searches of BADS, CTS, Whitepages, CLEAR, and Lexis Nexis found no working numbers for him. The CCRB therefore did not obtain a statement from § 87(2)(b) until July 7, 2015, when the field team conducted field work at 25 Deppe Place.

Neither § 87(2)(b) nor IAB had phone numbers for § 87(2)(b) and § 87(2)(b) confirmed that there was no number at which § 87(2)(b) could be reached, as his phone had been seized during the incident. Calls were made to the number on § 87(2)(b)'s arrest report, but the number was disconnected. Searches of BADS, CTS, and Whitepages found no additional numbers for § 87(2)(b). Between June 11, 2015, and August 9, 2015, four Lexis Nexis searches were performed using § 87(2)(b)'s name and address and yielded no results. Between June 23, 2015, and October 30, 2015, five calls were made to § 87(2)(b)'s attorney, § 87(2)(b) who repeatedly stated that he had no contact information for § 87(2)(b) but would contact the investigator if he received such information. Four letters were sent to two possible addresses for § 87(2)(b). The addresses were obtained from his arrest report and from IAB over the phone. One letter was returned in the mail by the U.S. Postal Service because the address was unknown. To date, the CCRB has been unable to reach § 87(2)(b) and he has not contacted the CCRB.

After having left two voicemails on § 87(2)(b)'s phone, contact was established with § 87(2)(b) on July 14, 2015. § 87(2)(b) provided a phone statement and was scheduled to provide a sworn statement over the phone on July 15, 2015 (board review 22). § 87(2)(b) missed his phone interview, and did not respond to the subsequent four calls made to him between July 21, 2015, and October 1, 2015. Between June 29, 2015, and October 1, 2015, three letters and three emails were sent to § 87(2)(b). No letters were returned in the mail by the U.S. Postal Service. Searches of the Department of Correction for New York City and New York State confirmed that neither § 87(2)(b) nor § 87(2)(b) is incarcerated (board review 18; 19). Neither § 87(2)(b) nor § 87(2)(b) provided sworn statements to the CCRB.

Findings and Recommendations

Allegations Not Pleaded

- **Discourtesy-** § 87(2)(b) alleged that an officer told § 87(2)(b) to “shut the fuck up.” § 87(2)(b) provided a sworn statement on July 7, 2015, and did not allege that an officer spoke discourteously to him. A discourteous language allegation has therefore not been pleaded.
- **Vehicle search-** § 87(2)(b) alleged that Det Moyer searched the inner compartment of § 87(2)(b)'s car door. Neither § 87(2)(b) nor § 87(2)(b) witnessed this, and § 87(2)(b) did not provide a sworn statement to the CCRB. A vehicle search allegation has therefore not been pleaded.
- **Force-** § 87(2)(b) alleged that while being frisked, an officer hit his testicles with his forearm. Neither § 87(2)(b) nor § 87(2)(b) witnessed the aforementioned force, and according to the IAB log, § 87(2)(b) made no mention of any force used against § 87(2)(b). In video

footage provided by § 87(2)(b) claimed to have seen officers choke § 87(2)(b). No other witnesses alleged this, and § 87(2)(b) did not allege this in his sworn statement. Given that these allegations were not made in sworn statements, and § 87(2)(b) was uncooperative in providing a sworn statement, allegations of choking and force used toward § 87(2)(b) have not been pleaded.

- **Threat of force/discourtesy-** § 87(2)(b) claimed that Det Moyer told him, “Don’t move/leave or I’ll fucking shoot you.” Neither § 87(2)(b) nor § 87(2)(b)’s statements corroborated this claim and § 87(2)(b) did not provide a sworn statement. Allegations of threat of force and discourtesy have therefore not been pleaded.

Allegation A – Det Mathew Reich used force against § 87(2)(b)

Allegation B – Det Clyde Moyer used force against § 87(2)(b)

Allegation C – Det Clyde Moyer used pepper sprayed against § 87(2)(b)

§ 87(2)(b) provided a phone statement on June 5, 2015, and a sworn statement to the CCRB on June 10, 2015 (board review 18; 19). Her statements were generally consistent. On May 30, 2015, § 87(2)(b) walked outside of her apartment building on 25 Deppe Place to find two officers, identified via the investigation as Det Reich and Det Moyer, kneeling next to a man, identified as § 87(2)(b) who was face down on the ground in handcuffs. Det Reich and Det Moyer had their hands near § 87(2)(b)’s face for an extended period of time, and § 87(2)(b) continuously shook his head. § 87(2)(b) could not see what the detectives were doing to § 87(2)(b)’s face. When § 87(2)(b) was propped up into a seated position, § 87(2)(b) observed § 87(2)(b) squinting his eyes, shaking his head, and kicking his legs in what appeared to be an expression of pain. Officers wiped § 87(2)(b)’s face with a towel. § 87(2)(b) was unable to see any injuries on § 87(2)(b) but saw blood on § 87(2)(b)’s arm and on the towel used to wipe his face.

In an unsworn phone statement, § 87(2)(b) who was apparently a friend of § 87(2)(b) claimed that after § 87(2)(b) attempted to flee from the officers, Det Moyer and Det Reich tackled § 87(2)(b) to the ground (board review 22). Det Moyer and Det Reich then beat § 87(2)(b) up by punching him, kneeling him, and kicking his head. § 87(2)(b) did not specify which officer used which type of force, but claimed that the officers beat § 87(2)(b) up for approximately five minutes before attempting to handcuff him. When they eventually did attempt to handcuff § 87(2)(b) did not comply with putting his hands behind his back, as it appeared that he was trying to protect his face. Det Moyer then pepper sprayed § 87(2)(b). § 87(2)(b) observed blood from § 87(2)(b)’s nose, forehead, and the top and back of his head. § 87(2)(b) did not specify if any of § 87(2)(b)’s injuries were sustained prior to this incident. As mentioned above, neither § 87(2)(b) nor § 87(2)(b) provided sworn statements to the CCRB.

§ 87(2)(b) was only present for a brief portion of the incident and had been drinking alcohol shortly before going outside and observing § 87(2)(b) and the officers. § 87(2)(b) did not witness any of the aforementioned force and could not recall if he observed any injuries on § 87(2)(b). Due to the brevity of § 87(2)(b)’s observance, it was unclear whether he would have been present at the time that the physical force and pepper spray were allegedly being used.

Cpt Miller, who did not witness this incident, reported to IAB that § 87(2)(b) claimed to have been punched and kneed in his face by Det Reich. Cpt Miller added that § 87(2)(b) claimed to have been hit in the face with a gun a week prior to his arrest, causing facial injuries.

Cpt Miller stated that § 87(2)(b) was resisting arrest, and he believed that § 87(2)(b)'s preexisting injuries were aggravated while on the ground (board review 1).

Det Moyer and Det Reich provided generally consistent statements. Both detectives stated that upon approaching § 87(2)(b)'s vehicle, they observed lacerations on § 87(2)(b)'s face, including on his forehead and nose. When the pills were removed from § 87(2)(b)'s pockets, § 87(2)(b) attempted to flee. Det Moyer wrapped his arms around § 87(2)(b) in a hugging position and both men fell to the ground. Both officers claimed that once on the ground, the officers attempted to handcuff § 87(2)(b) but § 87(2)(b) refused to give them his hands by moving his arms and holding them to his body. Det Moyer stated he managed to handcuff one of § 87(2)(b)'s arms but could not handcuff the other. Det Moyer eventually pepper sprayed § 87(2)(b) to gain compliance, however, § 87(2)(b) continued to be physically in compliant. One of the officers requested backup, and the responding officers assisted in handcuffing § 87(2)(b). Both Det Moyer and Det Reich denied punching, kicking, or kneeling § 87(2)(b) and they did not see any other officers do so. § 87(2)(b)'s arrest photo shows lacerations on his nose, above his left eyebrow, and below his right eye, as well as bruising below his left eye (board review 10). Both Det Moyer and Det Reich confirmed that all of the injuries depicted in the arrest photo were sustained prior to the incident, and acknowledged that the prior injuries were aggravated during the incident. Det Moyer and Det Reich claimed that § 87(2)(b) informed them that he had sustained his facial injuries a week prior when he had been hit in the face with a gun.

Det Maid was interviewed at the CCRB on November 2, 2015. Det Maid responded to the call for backup and confirmed that upon arrival, he observed some bleeding lacerations on § 87(2)(b)'s face. Det Maid observed Det Moyer and Det Reich trying to grab § 87(2)(b)'s arms, which § 87(2)(b) refused to give them. Det Maid assisted in grabbing § 87(2)(b)'s arms and within seconds was able to handcuff § 87(2)(b). Det Maid denied using or seeing other officers use the alleged force, but was informed by officers that § 87(2)(b) had been pepper sprayed prior to Det Maid's arrival on scene.

The radio communications CD confirmed that narcotics officers requested backup and that approximately two minutes after the request, § 87(2)(b) was arrested and no additional units were needed (board review 11). The Medical Treatment of Prisoner report included a detailed narrative that was consistent with the officers' statements regarding § 87(2)(b)'s preexisting injuries being aggravated during the incident (board review 13).

§ 87(2)(b), § 87(2)(g)

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Squad: ____

Investigator: _____
Signature Print Date

Pod Leader: _____
 Title/Signature Print Date

Attorney: _____
 Title/Signature Print Date